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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN L. NORIN, and SEAN S. LEE

Appeal 2011-000025
Application 11/595,416
Technology Center 3600

Before: MICHAEL C. ASTORINO, PATRICK R. SCANLON, and
BARRY L. GROSSMAN, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection mailed December 22, 2009 rejecting claims 1-30. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

The Claimed Subject Matter

The claimed subject matter relate to systems and methods which include a mobile receiving device, where the mobile receiving device takes into consideration the location of the device when content, such as advertising, is played back. Spec. [0006], [0009], [0010]. Claims 1, 20, 24 and 28 are independent claims. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of operating a mobile broadcasting system comprising:
 - determining a location of a mobile receiving device;
 - broadcasting a communication signal having a marker and a category therein;
 - broadcasting location-specific content having instructions to the mobile receiving device;
 - generating a display with the mobile receiving device corresponding to the communication signal;
 - when the marker is reached, the location-specific content is available, and the category corresponds to the instructions, changing the display with the mobile receiving device to display the location-specific content in response to the marker and the location; and
 - when the marker is reached, and no location-specific content is available or the category does not correspond to the instructions, displaying broadcast advertising from the communication signal.

References

The Examiner relied upon the following prior art references:

Nonomura	US 2002/0060747 A1	May, 23, 2002
Lowthert	US 2002/0100043 A1	July, 25, 2002
Whitsey-Anderson	US 6,968,206 B1	Nov. 22, 2005

Yoji Moishita, et al., Broadcasting Systems Using Stratospheric Platforms and Their Preliminary Experiments, IEEE 5th International Symposium on Wireless Personal Multimedia Communications, Vol. 2, pp. 454-458 (2002).

Rejections

Claims 1 – 30 are pending in the application. App. Br. 2.¹ Claims 1 – 30 stand finally rejected.² However, Appellants seek our review only of the following rejections involving claims 1-29:

1. Claims 1-5, 8-12, 14-17, 19-25 and 27-29 rejected under 35 U.S.C. § 103(a) over Nonomura and Lowthert;
2. Claims 6, 18 and 26 rejected under 35 U.S.C. § 103(a) over Nonomura, Lowthert, and Moishita; and
3. Claims 7 and 13 rejected under 35 U.S.C. § 103(a) over Nonomura, Lowthert, and Whitsey-Anderson.

The rejection of claim 30 is not before us for review. Reply Br. 2.³

¹ Citations to “App. Br. ____” are to the indicated page of the Appeal Brief filed on April 19, 2010.

² Final Rejection mailed December 22, 2009. *See also* the Examiner’s Answer, page 3.

³ Citations to “Reply Br. ____” are to the indicated page of the Reply Brief filed on September 1, 2010.

ANALYSIS

Claims 1-5, 8-12, 14-17, 19-25 and 27-29

Appellants argue many of the claims as a group.

Claim 1 Group – Appellants state that the following claims stand or fall with the outcome of our review of independent claim 1: claims 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, and 19.⁴

Claim 20 Group – Appellants state that the following claims stand or fall with the outcome of our review of independent claim 20: claims 21, 22, and 23.⁵

Claim 24 Group – Appellants state that the following claims stand or fall with outcome of our review of independent claim 24: claims 25 and 27.⁶

The Appellants separately argue, and we therefore separately address, the rejections of claims 4, 5, 6, 18, 26, 28, and 29.

Where Appellants do not present separate arguments for claims, the claims without separate argument stand or fall with the argued claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

Claim 1 Group

We start with an analysis of independent claim 1. The Examiner found that Nonomura discloses a broadcasting system for broadcasting content, including advertising information, wherein local advertising information may be broadcast in place of a commercial appended to the

⁴ Appellants state this grouping in their Appeal Brief, pages 10 – 12; and in their Reply Brief, pages 3 – 4.

⁵ Appellants state this grouping in their Appeal Brief, page 13; and in their Reply Brief, page 3.

⁶ Appellants state this grouping in their Appeal Brief, page 13; and in their Reply Brief, page 3.

broadcasting content when the local advertising information corresponds to an area. Ans. 4. As such, regarding claim 1, the Examiner found that Nonomura discloses the method substantially as claimed, except for the step of broadcasting the location-specific content having instructions. Ans. 6.

The Examiner also found that Lowthert discloses the inclusion of instructions in advertising information wherein the instructions may impose limitations upon the type, rating, source, content or other aspect. *Id.*

The Examiner concluded that it would have been obvious to one having ordinary skill in the relevant technology to modify Nonomura by incorporating the teachings of Lowthert of including instructions with the location-specific advertising content. *Id.* The combined references would then include receiving a broadcast including program content, markers for ad placements, and information regarding the type of program as well as broadcasting location specific advertisement information having instructions therein for permitting or prohibiting different types of advertisements on the basis of the program content. Ans. 9 – 10.

The Examiner's rationale for the proposed combination of Nonomura and Lowthert is that "the combination of references teaches receiving a broadcast including program content, markers for ad placements, and information regarding the type of program as well as broadcasting location specific advertisement information having instructions therein for permitting or prohibiting different types of advertisements on the basis of the program content." *Id.* The Examiner also reasoned that the combined references would yield a predictable result of providing suitable advertising content based on the type of programming information being displayed. Ans. 7.

We conclude that the Examiner has established a prima facie case of the reasons why Appellants are not entitled to a patent based on the claims pending in this case. Thus, this shifts the burden of going forward to the Appellants who must produce evidence and/or argument rebutting the case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Appellants agree that Nonomura is capable of controlling the insertion of advertisements. Reply Br. 3. Appellants also acknowledge that Nonomura discloses that instructions are broadcasted in the “general signal.” Reply Br. 4. Regarding claim 1, the only deficiency in the Nonomura reference mentioned by Appellants is “the lack of a category and instructions.” App. Br. 10.

Appellants admit that Lowthert is “directed to the receiver device being able to insert or not insert advertising based on some criteria,” but allege that the criteria are not “instructions that are carried with the location-specific content,” as called for in claim 1. *Id.*

Appellants argue that claim 1 specifically recites that “instructions” are provided in the “location-specific content”. *Id.* Appellants assert that Lowthert inserts an ad at an “ad entry” which is contained in an “info segment of a program.” *Id.* Appellants conclude that “it is clear” that the logic used for the “ad insertion” in Lowthert, that is, the “instructions” called for in claim 1, is contained within the program itself in Lowthert rather than in the location-specific content called for by claim 1. *Id.* Appellants also argue that the “content to be inserted includes the instructions rather than the identifiers provided for in paragraph 35 of the Lowthert reference.” Reply Br. 2.

We determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims “their broadest reasonable interpretation consistent with the specification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). It is the appellants' burden to precisely define the invention, not the PTO's. *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997).

Appellants' Specification provides no specific meaning for the term “instruction.” If the specification does not assign or suggest a particular definition to a claim term, it is appropriate to consult a general dictionary definition of the word for guidance in determining the ordinary and customary meaning of the claim term as viewed by a person of ordinary skill in the art. *Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343, 1348 (Fed. Cir. 2010). In the context of the relevant technology and the specification, the broadest reasonable interpretation consistent with the specification of the term “instruction” is a direction “to perform a particular operation. An instruction can also contain data to be used in the operation.”⁷

Appellants have not pointed to anything in their Specification that distinguishes the term “instruction” as it is used in the claims from the Examiner's findings concerning the disclosure in Lowthert. The only disclosure in Appellants' Specification that sheds light on the term “instruction” in the claims is a single example of an “instruction.” [Spec. 0039]. The example provided states that an “instruction” is appended to an

⁷ The American Heritage® Science Dictionary, © 2005 by Houghton Mifflin Company.

“advertising signal” to be evaluated by the receiving device. *Id.* Claim 1 refers only to a “broadcasting signal.” The example further states that the “instruction” would “state that this advertisement should only be displayed if the user is located within a certain geographic area described in location information 232 and if the user is tuned to a sports channel.” *Id.*

Appellants have not pointed to any evidence or provided any persuasive reasoning to establish that the Examiner erred in his findings and conclusions regarding the applied references. Specifically, Appellants have not pointed to any evidence or provided persuasive reasoning to support their allegation that the “instructions” in Lowthert, even if within the “program” as alleged, are substantively different from the location-specific content called for by claim 1. Appellants admit that Lowthert discloses a receiver device being able to insert or not insert advertising based on some criteria but assert, without citation of evidence or persuasive reasoning, that the criteria are not “instructions that are carried with the location-specific content,” as called for in claim 1.

Claim 12 depends from claim 1. Appellants have not included claim 12 in their Claim 1 Group. However, Appellants also have not separately argued any alleged error in the Examiner’s rejection of claim 12. Appellants have not pointed to any evidence or provided any persuasive reasoning regarding the rejection of claim 12. Where Appellants do not present separate arguments for claims, the claims without separate argument stand or fall with the argued claims. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011). Claim 12 thus falls with claim 1.

Accordingly, we affirm the rejection of claim 1. Claims 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 19 fall with claim 1.

Claims 4 and 5

Claim 4 depends from claim 1. Claim 5 depends from claim 4. Appellants argue that the Examiner “fails to point to a teaching that the location-specific information is communicated or broadcasted from a space-based source” as called for in claim 4. App. Br. 11. An example of a space-based source is a satellite, as called for in claim 5. Appellants concede that claim 5 stands or falls with claim 4. *Id.* However, in the Reply Brief, Appellants admit that paragraph 2 of the Nonomura specification discloses a space-based source, specifically a satellite, as found by the Examiner.⁸ Reply Br. 3. Their only remaining argument regarding claim 4 is that “[t]here is no teaching or suggestion that the location-specific content has instructions to the mobile receiving device.” *Id.* However, the deficiencies of this argument have been discussed above with respect to our analysis of claim 1.

Accordingly, we affirm the rejection of claims 4 and 5.

Claims 6, 18, and 26

Claims 6 and 18 depend from independent claim 1. Claim 26 depends from independent claim 24. These three claims all call for broadcasting “from a stratospheric platform.” Appellants admit that stratospheric platforms have been suggested for digital broadcasting, but argue that what is not taught or suggested is broadcasting location-specific information from a stratospheric platform. Reply Br. 4. The Examiner found that primary references disclosed the use of satellite or terrestrial broadcasting stations to provide advertising information on a digital broadcasting wave to a mobile

⁸ Nonomura discloses “[a] digital broadcasting receiving device for receiving digital broadcasting using a satellite or a ground wave.” Nonomura [0002]; Ans. 10.

receiving device wherein the advertising information may be location specific. Ans. 15. The Examiner also found that Moishita suggests the use of stratospheric platforms for providing digital broadcasting. *Id.* The Examiner concluded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Nonomura in light of the teachings of Moshita by using a stratospheric platform to broadcast the location specific content associated with the advertising/commercial information. Ans. 7-8. The rationale provided by the Examiner for incorporating a stratospheric platform is that it has the advantages of wider area of line of sight than terrestrial systems and smaller propagation losses and distortions due to shorter propagation distances than satellite systems. Ans. 15. Appellants have not pointed to any evidence or provided any persuasive reasoning to establish that the Examiner erred in his findings and conclusions regarding the applied references. Our analysis of claim 1 above dealt with Appellants' arguments regarding broadcasting location-specific information.

Accordingly, we affirm the rejection of claims 6, 18, and 26.⁹

Claim 20 Group

The Claim 20 Group includes claims 20-23. Appellants state that independent claim 20 is similar to claim 1 in many aspects but includes specifics to the system being a satellite-based system. App. Br. 12. Appellants repeat their arguments made against the rejection of claim 1 that there is no teaching or suggestion in the applied references for determining when the location is within an area and when the category corresponds with

⁹ Claim 26 was included in the rejection grouping of claims 6 and 18 and we have also included it here notwithstanding the fact that it depends from claim 24. *See* our analysis of claim 24 *infra*.

the instructions. *Id.* at 12-13. For the same reasons discussed above with respect to the rejection of claim 1 the Appellants' argument is not persuasive.

Accordingly, we affirm the rejection of claims 20-23.

Claim 24 Group

Appellants state that the reasons to reverse the Examiner's rejection of the claims in the Claim 24 Group, claims 24, 25, and 27, are "the same reasons set forth above with respect to claim 1." App. Br. 13. For the same reasons discussed above with respect to the rejection of claim 1 the Appellants' argument is not persuasive.

Accordingly, we affirm the rejection of claims 24, 25, and 27.

Claims 28 and 29

Independent claim 28 is directed to a receiver. The Examiner found that the receiver of claim 28 comprises two elements - a location module and a controller, each of which is disclosed by the combined prior art references. Ans. 5-6, 13. The Examiner concluded that it would have been obvious to a person of ordinary skill in the relevant technology to provide the specific operations of the controller called for in claim 28. *Id.* at 14. In particular, the Examiner found that Nonomura discloses a GPS receiving circuit 12 and a CPU 11 in the portable receiving device 30, and Lowthert discloses a controller 40 in the portable receiver 10. *Id.* at 13-14. The Examiner also found that the controller of Nonomura clearly is capable of controlling the insertion of location-specific advertisements/commercials for display on the basis of a plurality of received/inputted information. *Id.* at 14.

Regarding independent claim 28, Appellants repeat their argument that the applied references do not disclose or suggest the location-specific

content with location information and instructions received by the controller. Appellants assert that Nonomura teaches that instructions are broadcasted in the general signal not in or with an advertisement. Reply Br. 4. For the same reasons discussed above with respect to the rejection of claim 1 the Appellants' argument is not persuasive.

Claim 29 depends from claim 28. Appellants argue generally that the applied references fail to disclose the limitations called for in claim 29 but provides no specific substantive argument as required by Rule 41.37(c)(1)(vii) to support their position and rebut the finding of the Examiner (Ans. 14). Thus, we consider any arguments against the rejection of claim 29 waived. *See In re Lovin*, 652 F.3d 1349, 1356-1357 (Fed. Cir. 2011).

Accordingly, we affirm the rejection of claim 28 and 29.

Claim 30

Appellants do not seek review of the rejection of claim 30. Reply Br. 2. An appellant's brief must be responsive to every ground of rejection stated by the examiner that the appellant is presenting for review in the appeal. If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board. MPEP § 1205.02. *See, e.g., Hyatt v. Dudas*, 551 F.3d 1307, 1313-14 (Fed. Cir. 2008) (the Board may treat arguments Appellant(s) failed to make for a given ground of rejection as waived).

Accordingly, we sustain the rejection of claim 30 made in the Final Rejection mailed December 22, 2009.

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DECISION

We AFFIRM the decision of the Examiner to reject claims 1-30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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